

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket 96-45
Universal Service)	

Reply Comments of TCA

I. Introduction and Summary

TCA, Inc. - Telcom Consulting Associates (“TCA”) hereby submits reply comments in response to the Public Notice released by the Federal-State Joint Board on Universal Service (“Joint Board”)¹ in the above-captioned proceeding.² The Public Notice sought comment on various issues related to the reform of high-cost universal service mechanisms for rural carriers, including recommendations on the appropriate mechanism to succeed the five-year plan adopted by the Commission in 2001.³ TCA’s reply comments address initial comments filed by various parties on October 15, 2004 in this proceeding.

TCA is a consulting firm providing financial, regulatory, management, and marketing services to over eighty small, rural local exchange carriers (“LECs”) throughout the United States. TCA’s clients have all been granted eligible telecommunications carrier (“ETC”) status, thereby qualifying to receive support from federal universal service support mechanisms. Accordingly, TCA files these reply comments of behalf of its clients, that will be directly impacted by a decision made in this proceeding.

TCA asserts that the current universal service support mechanisms for rural LECs have proven successful at preserving and advancing universal service and should not be modified. Additionally, the Commission will soon continue active consideration of comprehensive reform

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, FCC 04J-2, released August 16, 2004.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order (FCC 01-125), released June 28, 2004.

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, FCC 01-157, released May 23, 2001 (“RTF Order”)

of the existing intercarrier compensation regime – a proceeding that will very likely significantly impact universal service support mechanisms. For these reasons, TCA recommends the Joint Board defer action on universal service reform for rural LECs. However, the Joint Board should take this opportunity to reaffirm that universal service support should only be available to providers of universal service as required by the Telecommunications Act of 1996 (“1996 Act”). This includes the reexamination of the current policies of providing wireless ETCs support (1) based upon incumbent rural LECs’ cost of providing service; (2) absent any evidence that the support is being used for the intended purposes; and (3) for failing to provide anything resembling universal service. These policies – enacted primarily to promote “competition” in the service areas of rural LECs – have resulted in unsustainable growth in universal service support mechanisms. Joint Board action could solve this critical issue, which jeopardizes the continued existence of universal service support for rural LECs and their customers who rely upon them for telecommunications services.

II. The Commission Should Defer Changes to Universal Service Support Mechanisms for Rural LECs Until After it Concludes Intercarrier Compensation Reform.

As several parties filing comments correctly recognized, the Commission is preparing to embark on a comprehensive reform of the existing regime of intercarrier compensation.⁴ Various plans for intercarrier compensation reform have been filed with the Commission in anticipation of the release of a Further Notice of Proposed Rulemaking in the very near future. Several of these reform proposals are comprehensive, envisioning modifications to not only to the various forms of federal and state intercarrier compensation, but also to separations rules and federal and state high cost support mechanisms.⁵ The significant possibility that federal universal service support mechanisms could undergo substantial changes as a result of the Commission’s intercarrier compensation reform clearly obviates the need to embark upon a major reform of universal support mechanisms for rural LECs at this time. Only after the Commission has implemented a new intercarrier compensation regime and the impacts upon rural LECs can be determined would be the proper time to review federal high cost mechanisms for rural LECs. Finally, as NECA correctly observes, there is no Commission rule or federal

⁴ See, for example, Comments of JSI at p. 4 and Comments of the Plains Rural Independent Companies at p. 8.

⁵ Several of the plans propose the unification and reduction of all intercarrier rates with the resultant revenue losses recovered from a new or existing high cost mechanism.

statute mandating that the Commission implement a new high cost support mechanism for rural LECs by July 1, 2006.⁶ This is simply the five-year anniversary of the Commission's previous universal service reform for rural LECs. Instead of devoting its resources to meeting an artificial deadline, the Commission should first conclude the more urgently needed intercarrier compensation reform.

III. The Current Federal Support Mechanisms – Based Upon Embedded Cost -- Should Remain the Basis for Universal Service Support for Rural LECs.

Instead of considering modifications to federal universal service support mechanisms for rural LECs, the Commission should be extolling the success of the current system for promoting and advancing universal service. The current mechanisms available to rural LECs – which provide a reasonable opportunity for recovering the cost of investing in facilities -- have resulted in rural LECs deploying broadband-capable networks in high-cost areas at a much more rapid pace than have non-rural LECs, while at the same time maintaining rates comparable to rates charged in urban areas. Furthermore, this remarkable feat has been accomplished without a real increase in cost to the nation's consumers of telecommunications services.⁸ The Commission's current universal service support mechanism for rural LECs has proven an unqualified success and calls for replacing it are at best premature and, in all probability, unwarranted.

As several commenters correctly observed, embedded costs are the only measure by which to accurately quantify the cost of providing universal service.⁹ Embedded costs are relatively easy to measure as they are the result of an expenditure of capital. External auditors, lenders and state and federal regulators rely upon and audit embedded costs, not hypothetical costs. Basing support upon the actual costs of the provider of universal service is the only way to incent investment in costs in high-cost areas. Destroying the link between investment and high-cost support eliminates any incentive for carriers to invest – as support is received whether or not any actual investment occurs. It is no coincidence that investment in high-cost areas served by rural LECs has outstripped investment by non-rural LECs (where high-cost support is based upon forward-looking costs) during the past four years.¹⁰ Finally, not only are hypothetical costs

⁶ Comments of NECA at p. 5

⁸ The FCC's cap on high cost support for rural LECs has limited fund growth to the inflation rate.

⁹ Comments of Interstate Telecom Consulting at p. 12

¹⁰ Comments of Texas Statewide Telephone Cooperative, Inc. at p. 10.

subjective and easily manipulated, they can only be derived from a proxy model, a complex and expensive undertaking. As virtually all parties commenting in this proceeding acknowledged, there is no current forward-looking cost model that provides accurate results for rural LECs.¹¹

IV. Universal Service Support Mechanisms Must be Limited to the Promotion and Advancement of Universal Service.

While the current federal universal service support mechanisms for rural LECs have proven quite successful, the Commission's policy of promoting competition in high-cost areas has failed miserably. Federal and state regulators have routinely granted wireless carriers ETC status with limited scrutiny of any ability or willingness to provide universal service. These actions have provided wireless carriers unfettered access to federal support mechanisms, primarily for serving existing customer bases. Because competitive ETC support is unconstrained by a cap, it has grown at a staggering pace¹² -- unlike universal service support mechanisms available to rural LECs. The policy of promoting "artificial" competition is unnecessarily increasing the cost of advancing universal service to the nation's consumers -- many claim at an unsustainable rate. Incredibly, very little evidence exists that the Commission's policy of uneconomic competition in the service areas of rural LECs has advanced or promoted universal service. Unfortunately, the Joint Board elected not to address this issue in a recent referral.¹³ It should not pass on a similar opportunity in this proceeding.

A. Support for Competitive ETCs Should Not Be Based Upon the Incumbent LEC's Cost of Providing Universal Service.

The Commission's policy of providing identical support to wireless ETCs -- under the guise of competitive neutrality -- is responsible for the vast majority of the growth in rural high cost support mechanisms. Contrary to claims of wireless ETCs,¹⁴ competitive neutrality does not require identical outcomes -- only identical treatment. Accordingly, universal service support mechanisms available to wireless carriers -- similar to how comparable mechanisms available to rural LECs require -- should require cost justification. Establishing the connection between cost and universal service support would provide much greater assurance that universal service

¹¹ Comments of FairPoint at pp. 10-14 and Comments of GVNW at pp. 9-13

¹² Comments of NECA at pp 10-12

¹³ In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, FCC 04-J1, CC Docket 96-45, (rel. February 27, 2004), para. 119.

¹⁴ Comments of Western Wireless at p. 9.

support is being used for its intended purpose, as required by the 1996 Act.¹⁵ Contrary to the laughable assertion of CTIA (apparently made solely to deflect attention from its members' grab at federal monies)¹⁶ the real problem lies with verifying the use of support provided to wireless ETCs. Unlike universal service support provided to rural LECs, which is based upon investments made and costs incurred, support provided to wireless ETCs bears absolutely no relationship to costs incurred to provide service to high-cost customers. This has enabled wireless ETCs like Western Wireless to use universal service support to enhance its bottom line, instead of investing in facilities to provide universal service, as evidenced by this statement from Western Wireless CEO, John Stanton, in a meeting with the investment community:

The USF subsidy represents an incremental revenue source, which we believe should improve our revenue and EBITDA estimates by \$6-8 million during the first quarter and \$24-30 million during 2003 as *the incremental revenue is almost all margin*.¹⁷

Basing competitive ETC support on its own cost of providing universal service would – similar to rural LEC support mechanisms – have the additional advantage of providing an incentive for investment in unserved and underserved high-cost areas. Unlike the current practice of providing wireless carriers obligation-free access to universal service support mechanisms, investment in high-cost areas could actually result in the advancement of universal service. Despite anecdotal “evidence” offered by CTIA¹⁸ of a linkage between the receipt of high cost support and investment in facilities, the reality of in rural high-cost states such as Colorado has proven otherwise. During 2001, the Colorado Public Utilities Commission’s (“CPUC”) granted Western Wireless ETC status in the service areas of six small single-exchange rural LECs.¹⁹ As a result of this action, Western Wireless received approximately \$270,000 in federal universal service support based upon the rural LECs’ cost of providing service.²⁰ Two years later, Western Wireless returned to the CPUC to seek ETC status in the service territory of another rural LEC.

¹⁵ 47 C.F.R. § 54.314 requires that the state commission annually certify that rural ETCs are using federal support mechanisms for the purposes intended. Failure to receive certification results in a loss of federal support.

¹⁶ Comments of CTIA at p. 10. CTIA claims that the administrative complexity of rural LEC universal service mechanisms makes it exceedingly difficult for USAC and the FCC to confirm that support is being used for its intended purpose.

¹⁷“Western Wireless (WWCA): USF Provides Upside To Our EBITDA Estimate,” Salomon Smith Barney Research Note, issued January 9, 2003, at p. 2 (emphasis added). WWC was projected \$60 million in federal high-cost support in 2004.

¹⁸ Comments of CTIA at p. 15

¹⁹ Agate Telephone Company, Blanca Telephone Company, Pine Drive Telephone Company, S&T Telephone Company (Kantorado Exchange), and South Park Telephone Company

During that proceeding, uncontroverted evidence was introduced demonstrating that from the date of its first ETC grant until the hearing – a period of almost two years – Western Wireless had failed to add a single tower in the state nor had it made equipment additions or an application for radio equipment.²¹ The failure to invest in facilities in rural Colorado cannot be attributed to a lack of customer need, as anyone who has driven through the sparsely populated areas for which Western Wireless received ETC status can attest. While the Commission has recently attempted to require investment in facilities in exchange for ETC status,²² these efforts have proven “too little, too late” as wireless carriers have vociferously resisted any change to the status quo of their receipt of obligation-free funds. Additionally, state commissions are reluctant to impose buildout requirements on new applicants after previously granting ETC status to other wireless carriers with no such comparable obligation. This situation would be remedied by basing competitive ETC support on actual investment in high-cost areas and would produce a level playing field for all wireless carriers, regardless of when and under what conditions ETC status was granted.

B. Recipients of Universal Service Support Should be Required to Actually Provide Universal Service.

The Commission should reestablish its policy of providing universal service support to carriers deploying networks capable of providing ubiquitous service in high-cost areas. Current rules enable virtually any wireless carrier providing service to a customer with a billing address in the service territory of a rural LEC to receive support. This could easily be accomplished by enforcing the statutory mandate requiring ETCs to serve the entirety of the service area of the rural LEC.²³ Initially, wireless carriers claimed to meet this requirement in low-density, high cost states where traditional wireless coverage was limited to major highways and cities by offering fixed wireless service, which had a much greater range than its traditional wireless

²⁰ USAC Universal Service Fund Projection, HC01 Report, 3rd quarter, 2003, found at <http://www.universalservice.org/overview/filings/2003/Q3/>.

²¹ CPUC Docket No. 03A-061T. Cross answer testimony of CTA witness Glenn Brown, p. 5. Mr. Brown obtained this evidence from the FCC’s Universal Licensing System database.

²² *In the Matter of Federal-State Joint Board in Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, (rel. January 22, 2004).

²³ Section 214(e)(1) of the 1996 Act states that an ETC must 1) be a common carrier, 2) offer the services supported by universal service support mechanisms under Section 254(c), 3) offer these services throughout the service area for which the designation is received and 4) advertise the availability of such services and the associated charges.

handset.²⁴ In reality, this fixed wireless service offering has served as little more than “Trojan Horse” enabling wireless ETCs to receive universal service support for traditional cellular customers.²⁵ While some state commissions have objected to this manipulation of the ETC requirements,²⁶ most have stood idly by as wireless carriers receive universal service support for thousands of low-cost conventional wireless customers simply because the wireless provider promises to make available a fixed wireless service offering to remotely located high-cost customers in the same wire center.²⁷ Limiting wireless ETC support to customers served by its fixed wireless service offerings, as wireless carriers initially proposed, could better ensure that federal support mechanisms are used for their intended purposes – to assure the availability of affordable telecommunications service to all consumers living in remote and high cost areas. Furthermore, as the wireless carriers’ fixed offering is the only service that could be legitimately argued to be offered throughout the service territory, this approach may enable true compliance with Section 214(e)(1)(3) of the 1996 Act.

Reemphasizing that universal service support is for the cost of construction and maintenance of networks in a high cost area – not for any and all “lines served” -- would enable the Commission to meet its statutory obligation to provide sufficient support.²⁸ Several of the proposals suggested by commenters would, if adopted, sorely test the sufficiency requirement. Primary among these is the proposal by Western Wireless to allocate universal service support among ETCs based upon “market share.”²⁹ Adoption of this proposal would prove devastating to rural LECs, as they would continue to be required to construct and maintain ubiquitous networks throughout their service territories under their carrier of last resort responsibilities. However, support based upon the cost of these networks would be siphoned off to wireless ETCs -- with no

²⁴ Frequently in these ETC proceedings, witnesses for Western Wireless assure state commissioners that ETC designation will be limited to its Wireless Residential Service offering. See *In the Matter of the GCC License Corporation’s Petition for Designation as an Eligible Telecommunications Carrier (d/b/a Western Wireless), Before the State Corporation Commission of the State of Kansas*, Docket No. 99-GCCZ-156-ETC, Volume 1, Transcript of Proceedings held May 9, 2000, pp. 117-118.

²⁵ Despite serving as the basis for Western Wireless’ designation as an ETC in Colorado, The Office of Consumer found that Western Wireless’ fixed wireless service is no longer even available to Colorado consumers. See answer testimony of Pat Parker in Docket 04A-018T pp 14-16.

²⁶ See, in general, Application No. C-1889 *Order Approving Advertising Plan Before the Nebraska Public Service Commission*. The NPSC has insisted that WWC limit its supported service offering to its fixed wireless service. Because WWC has refused to comply, USAC continues to identify it as ineligible to receive support.

²⁷ The CPUC granted Clear Talk (a PCS provider) ETC status in a mountainous area of Western Colorado absent any proof that a “yet to be developed” fixed wireless offering would provide supported services throughout the service territory. Clear Talk merely has to represent to the CPUC that the offering is “functioning and available for customer use.” See CPUC Decision No. R03-1464 at page 7, mailed date December 31, 2003.

²⁸ 47 U.S.C. §254(b)

²⁹ Comments of Western Wireless at p. 36.

obligation to serve high-cost customers or even the entirety of the service area. The current practice of many wireless ETCs to inflate the numbers of “lines served” or incorrectly identify the location of these customers (identified by billing addresses) would increase the harm of this proposal to rural LECs. To date, the most egregious example of this practice can be attributed to Western Wireless for certifying that it provided service to 30,108 working loops in the Pine Ridge Reservation of South Dakota, even though according to the 2000 Census there were only 14,068 residents in 3,922 housing units on the reservation.³⁰ Not only would Western Wireless’ proposal substantially harm rural LECs, it would also maintain the current system of providing universal service support to carriers failing to provide universal service. Accordingly, the Joint Board should reject out-of-hand this self-serving proposal.

V. Conclusion

The Joint Board should carefully consider calls for major changes to the current universal service support system for rural LECs, as substantial change will only serve to threaten the successful system of universal service support in place today. For rural LECs, the current system is working as designed and no reason exists for change beyond July 1, 2006. However, the same cannot be said for support provided to wireless ETCs. Far too often, state and federal regulators have ignored the requirements of the Act for access to support mechanisms in an effort to lure “competitors” into the service territory of rural LECs. Not surprising, these shortsighted efforts have resulted in wireless ETCs abusing the system until its very sustainability is in question. This is where the Joint Board and the Commission need to focus their attention – not on the current RTF plan, which has worked remarkably well in promoting and advancing universal service.

Respectfully submitted,

[electronically filed]

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³⁰ Comments of SBC Communications, Inc. at p. 6.